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Synopsis: Current Suggestions regarding the Discussion about a European Constitution

Sankt Augustin, June 2002

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1.) List of suggestions

This synopsis provides topical suggestions regarding the ongoing discussion about a European Constitutional Treaty and the reform of the European Union setting them in context with the current status quo in the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC). The following texts have been taken into consideration:

- **Treaty on European Union and Treaty Establishing the European Community**, as of 2 October 1997
[Abbreviated in the synopsis as: TEC / TEU]
- **EPP**: draft document: „A constitution for a strong Europe“, 7 March 2002
[EPP]
- Suggestions by the **CDU and CSU** for a European constitutional treaty („**Schäuble-Bocklet-Paper**“), 26 November 2001
[CDU / CSU]
- **“European Parliament** resolution on the division of competencies between the European Union and the Member States“, 16 Mai 2002 (A5-0133/2002, Rapporteur: Alain **Lamassoure**) (2001/2024 INI)
[EP (Lamassoure)]
- **European Commission**: "A project for the European Union" (Communication from the European Commission to the European Convention) (KOM (2002 247endg)), 22 May 2002
[KOM]

2.) Methods

Even though there exists a high degree of thematic common ground the texts providing the suggestions show great differences in their concentration on various issues and their level of detail. Their innate comparability is therefore partly restricted.

In compiling this synopsis the question of how detailed the different reform concepts should be presented arises naturally. It seems impossible to incorporate the entire spectrum of recommendations, as this would defeat the purpose of creating a concise representation. Therefore, the authors have made a selection among the numerous recommendations concentrating on the **Key Questions of EU-Reform**.

The selection was made with regard to the priorities laid down in the „Declaration on the Future of the European Union“ in the appendix to the conclusions from Nice (December 2000) and the Presidency Conclusions of the European Council Meeting in Laeken (December 2001).

Five Key Questions at the centre of EU-reform can be identified:

Key Question 1:

- How should the legal status of the Charter of Basic Rights that was proclaimed at Nice be defined?
- How can the treaties be simplified (possibly in a draft constitution) without changing their content?

Key Question 2:

- How can the division of competencies between the European Union and the member states be organised?

Key Question 3:

- How should the division of competencies between the institutions of the European Union be organised?
- What is the role of national parliaments within the European Union?

Key Question 4:

- How can the coherence and efficiency of the foreign policy of the European Union be guaranteed?

Key Question 5:

- How can the democratic legitimacy of the European Union be strengthened?
- What are the expectations of citizens towards the European Union?

Questions 1 to 3 appear especially important as improvements in these areas are imperative if the enlarged union is to remain functional in the future. Consequently, all texts address at least one of these three questions.

While questions 4 and 5 are just as important as the others they do not appear as stand alone reform concepts but rather in conjunction with questions 1 to 3 within the source texts. Therefore, only key questions 1 to 3 are listed as stand alone items in the synopsis.

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 6 -
<p>Key Question 1</p> <p>Restructuring of the Treaties</p> <p>Draft Constitution</p> <p>Legal Status of the Draft Constitution</p> <p>Embedding of Fundamental Rights</p>	<ul style="list-style-type: none"> • Subdivision of the „Constitution“ into differing treaties: <ul style="list-style-type: none"> - Treaty on European Union - Treaty establishing the European Community - Treaty establishing the ECSC - Treaty establishing Euratom - Single European Act - Protocols and Declarations attached to the treaties • Fundamental Rights dispersed over the entire treaty (e.g. Preamble + Art. 6 TEU) 	<ul style="list-style-type: none"> • European Constitution Parts: <ul style="list-style-type: none"> - Charter of Fundamental Rights - Distribution of competencies EU – Member States - new framework for institutional structures • Integration of the Charter of Fundamental Rights into the “Constitution” with legal force (No. 25) 	<ul style="list-style-type: none"> • Subdivision: Constitutional Treaty <ol style="list-style-type: none"> a) Charter of Fundamental Rights b) Distribution of competencies c) “Financial constitution” d) Working methods of the institutions (Suggestion No. 6) ⇒ Complementing community law (secondary law) next to the Constitutional Treaty (No. 6) • Integration of the Charter of Fundamental Rights into the Constitutional Treaty (No. 6) 	<p>One Constitution of the European Union addressed to all citizens (No. 3)</p> <p>Suggests a division of the treaties into two parts</p> <p>Changes to the treaties by a simplified procedure (No. 10)</p>	<ul style="list-style-type: none"> • Blending of TEC and TEU into one Constitutional Treaty (p.18f) • Constitutional Treaty taking over the key elements of the treaties, normal ratification procedure (p. 20) • Changes to the non-constitutional part by simplified procedure (p. 20) • Integration of the Charter of Fundamental Rights into the Constitutional Treaty (No. 6) 	
Structural Principles	<ul style="list-style-type: none"> • Subsidiarity (Art. 5 TEC) ⇒ Not always adhered to by legislative, e.g. for political or expediency reasons 	<ul style="list-style-type: none"> • Subsidiarity (No. 14, 17) 	<ul style="list-style-type: none"> • Subsidiarity (No. 3a) 	<ul style="list-style-type: none"> • Subsidiarity (Reasons of deliberation C, E, F, G, S; No. 1, 11, 32) 	<ul style="list-style-type: none"> • Subsidiarity 	
Self Image of the EU (Political Character of the EU)	<ul style="list-style-type: none"> • In between European Federal State (Federation) and European Federation of States 	<ul style="list-style-type: none"> • EU is based on National States (No.13) • EU is neither federation nor state in a classical sense (No. 29) • EU has (international) legal status of its own 	<ul style="list-style-type: none"> • EU is based on National States (No. 2c) • Union of States (“Staatenverbund”) (No. 2c) 		<ul style="list-style-type: none"> • EU has (international) legal status of its own (p. 20) 	

Annotation: To ease the comparability of some items, **words in bold** point to certain duplications in several suggestions. However, this does not express whether they are congruent or controversial with regard to their position on the matter

The following abbreviations have been used in the synopsis:

EC	=	European Council	C	=	Commission
CE	=	Council of the European Union	EP	=	European Parliament
MS	=	Member States	ECJ	=	European Court of Justice

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 7 -
<p>Key Question 2</p> <p>Division of Competencies</p>	<ul style="list-style-type: none"> • Because of unclear division EU tends to expand its competencies or take actions in questions of political detail <p>• Differentiation between exclusive, competing (or shared), and completing competencies</p> <p>• General clause (Art. 95 and 308 TEC) make the expansion / redefinition of the tasks of the EU possible, without having to resort to the ponderous process of treaty revision</p>	<ul style="list-style-type: none"> • Enumeration and definition of the modes of action (No. 21) • Competencies of the EU are laid down with specific content in the constitution <p>⇒ Principle of enumeration (No. 17, 18), otherwise competencies are assigned to the MS (No. 19)</p> <p>• Differentiation between exclusive and shared competencies (No. 21)</p> <p>• Recurring checks of the distribution of competencies – no rules “set in stone” (No. 17, 22)</p>	<ul style="list-style-type: none"> • Modes of action and instruments enumerated with specific content <p>⇒ Principle of enumeration (No. 3 d, e)</p> <ul style="list-style-type: none"> • Competencies of the EU have to be justified with a concise and clear mandate (No. 3b) <p>• Differentiation between exclusive competence, fundamental competence and completing competence (No.3f)</p> <ul style="list-style-type: none"> • Abstinance from the General clause Art. 308 TEC and additional precision in the use of the Internal Market clause Art. 95 TEC (No. 3i) • Scale Directives (EU-Framework law) back to their original function as framework decisions. Directives have to be viewed separately from Regulations (EU-laws), Decisions, Communications and Suggestions (No. 3e) • Redistribution of competencies to the MS (No. 2) 	<ul style="list-style-type: none"> • Implementation of community policies has to be as decentralised as possible • More consideration for local differences (No. 38) • Distribution of competencies according to the principles of Subsidiarity and Proportion • EU only takes action if has been invested with the applicable competence <p>• Art. 308 TEC remains unchanged (No. 35)</p>	<ul style="list-style-type: none"> • Implementation of communitary policy has to be as decentralised as possible • More consideration for local differences (No. 1.1) • Distribution of competencies according to the principles of Subsidiarity and Proportion • EU only takes action if has been invested with the applicable competence • EU law supersedes national law (p. 21) 	

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 8 -
Competencies of the EU	<ul style="list-style-type: none"> • <u>1. Exclusive Competence:</u> <ul style="list-style-type: none"> - Common Market and Competition law - Common Currency • <u>2. Shared Competence:</u> <ul style="list-style-type: none"> - CFSP - Justice (also police co-operation) - Transport - Immigration, Visa, Asylum - Internal security - Environment - Consumer protection - Agricultural policy - Social policy, - Labour policy - Energy, Tourism - Citizenship of the EU - the "Four Freedoms" • <u>3. Completing Competence:</u> <ul style="list-style-type: none"> - Health, Education, Culture - Transeuropean Networks - Research, Development - Defence Policy 	<ul style="list-style-type: none"> • <u>1. Exclusive Competence:</u> <ul style="list-style-type: none"> - CFSP, e.g. common foreign representation - Common Market and Competition law, Freedom of movement - Common Currency - reformed Agricultural Policy - securing the basic freedoms • <u>2. Shared Competence</u> (Assessment of competencies with transnational/supranational character): <ul style="list-style-type: none"> - Justice - Immigration - Internal security - Communications and Infrastructure - Research - Environment - Health Policy (No.19, 21) 	<ul style="list-style-type: none"> • <u>1. Exclusive Competence:</u> <ul style="list-style-type: none"> - CFSP, e.g. common foreign representation - Common Market and Competition law, Freedom of movement - Common Currency - Agricultural Policy • <u>2. Shared Competence</u> (Assessment of competencies with transnational/supranational character): <ul style="list-style-type: none"> - Justice - Immigration (strongly restricted) - Internal security - Infrastructure, Transport - Research - Environment - Health Policy (No. 1f) 	<ul style="list-style-type: none"> • <u>1. Exclusive Competence:</u> <ul style="list-style-type: none"> - CFSP - Foreign Trade Relations - Common Currency - Tariffs - Regional- and Cohesion Policy - Financing of the Budget of the EU (No. 22ff.) • <u>2. Shared Competence:</u> <ul style="list-style-type: none"> a) Shaping of general regulations b) EU acts complementary c) Co-ordination of national Policies - Justice (standardisation of legal directives) - Agricultural Policy, Fisheries - Infrastructure (Transport) - Environment - Research - Social- u. Labour Policy - Development - Immigration - Energy (No. 26) <u>3. Completing Competencies</u> (actions of the EU strongly restricted) <ul style="list-style-type: none"> - Education - Youth Policy - Civil Emergency - Culture and Sports - Tourism (No. 29) 	<ul style="list-style-type: none"> • Competencies of the EU not laid down rigidly (p. 21) However, competencies in the following areas: <ul style="list-style-type: none"> - Common Market, Common foreign representation (p. 8) - Environment, Agriculture, Energy and Transport, Tax and Social Policy (p. 5-6), - common control of the external borders (creation of a European border corps) - common Immigration- and Asylum Policy (p. 9) - Economic and Budget Policy (p.7), - Justice (European Prosecution) (p.10) 	

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 9 -
Competencies of the Member States (MS)	<ul style="list-style-type: none"> • <u>Competencies</u> of the MS not defined 	<ul style="list-style-type: none"> • <u>Competencies</u> of the MS not defined in constitution • MS automatically assume competencies that the EU does not claim (No. 18) • <u>Areas of competence:</u> <ul style="list-style-type: none"> - Policy areas with long grown traditions - Culture and the area of civil society; social security systems - internal organisation of the MS - Education, Culture and Sports (No. 20) here: case by case European co-operation 	<ul style="list-style-type: none"> • <u>Assumption of competencies</u> generally with the MS (No. 3b) • MS automatically assume competencies that the EU does not claim (No. 3f) • <u>Areas of competence:</u> <ul style="list-style-type: none"> - Policy areas with long grown traditions - Culture and the area of civil society; social security systems - internal organisation of the MS - Education, Culture and Sports - Labour Policy - Immigration - Honorary / non-profit Organisations (No. 1f) - Tourism (No. 4 Appendix) 	<ul style="list-style-type: none"> • <u>Competencies</u> of the MS not expressly defined • Fundamental competence of the MS (No. 21) • <u>Areas of competence:</u> Especially: <ul style="list-style-type: none"> - Budget Policy of the MS - territorial organisation of the state (ibid. No. 21 + 30) 		

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 10 -
<p>Key Question 3</p> <p>Reform of the Institutions</p>		<ul style="list-style-type: none"> Mixture between legislative and executive competencies has to be reduced (No. 29) 	<ul style="list-style-type: none"> Mode of assembly and working methods of the institutions have to adhere to democratic principles (No. 2d) Goal: Balance of power between the institutions of the EU (No. 5a) 	<ul style="list-style-type: none"> Clear separation of legislative and executive powers (No. 12ff.) 	<ul style="list-style-type: none"> Regulations: no splitting of the right of initiative, co-decision procedure, qualified majority, surveillance by ECJ (p. 10,24) 	
European Parliament (EP)	<ul style="list-style-type: none"> right of information restricted right of legislative initiative (EP can only ask C to do so) right of interpellation (Art. 197 TEC) 	<ul style="list-style-type: none"> EP is to be endowed with the same powers of legislation as the CE, incl. budgetary competence (No. 30, 33) Representation in EP according to population (Minimum number of MEPs for small MS (No. 31) Election of MEPs based on common European electoral law; choice of party candidates according to democratic principles (No.32) Election of the President of the European Commission and the entire C itself by EP; CE has to acknowledge the vote by majority (No. 41) 	<ul style="list-style-type: none"> Legislation is joint responsibility of EP and CE (No.5b) Right of information and right of legislative initiative (No. 5c,f) Election of the President of the European Commission and the entire C itself by EP; CE has to acknowledge the vote by majority (No. 5d) 	<ul style="list-style-type: none"> EP and EC legislative (No. 12) 		
European Council (EC)	<ul style="list-style-type: none"> Unanimity Decisions of the EC are generally not made in public 					

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	– 11 –
Council of the European Union (CE)	<ul style="list-style-type: none"> • CE legislative and executive function • qualified majority decisions are the general rule in the CE • CE is subject to control by the ECJ (Art.230 TEC) • Decisions in the CE are generally not made in public 	<ul style="list-style-type: none"> • CE is to be restricted to legislative function; no executive function; CE as 2nd Chamber (Chamber of the MS) (No. 35-37) • Majority decisions as a general rule in the CE (No. 38) • Unanimity only required for treaty changes, Accession of new members, far reaching redistribution of finances, and decisions about national resources (No. 38) • Reduction of the number of different compositions of the CE • Meetings of the CE to be held in public (No. 35) 	<ul style="list-style-type: none"> • CE as legislative (No. 5g), in instances of intergovernmental co-operation it serves as Executive Council (No. 5f) • qualified majority decisions of the CE in areas of community competencies (No. 5e) • Right of legislative initiative (No. 5) • Unanimity in cases of executive council decisions (No. 5f) • Usage of the General clause (Art. 308 TEC) or of decisions concerning financial commitments (No. 5e) • Meetings of the CE to be held in public (No. 5g) 	<ul style="list-style-type: none"> • CE has legislative function (No. 12) 	<ul style="list-style-type: none"> • Qualified majority decisions in the CE (p. 6) 	
Commission (C)	<ul style="list-style-type: none"> • C is executive and has the sole right of legislative initiative • President of the Commission is dependent on MS governments and EP for choosing the Commissioners • Number of Commissioners can be changed by unanimous vote of the CE 	<ul style="list-style-type: none"> • C is the executive (No. 40) • President of the Commission chooses the Commissioners himself (No. 42) • Election of the President of the Commission and the Commissioners by EP; CE has to acknowledge the vote by majority (No. 41) • The task of the General Secretariat of the CE should be taken over by the C (No. 43) 	<ul style="list-style-type: none"> • C is the executive, right of legislative initiative (No. 5c,d) • President of the Commission chooses the Commissioners himself (No. 5d) • Election of the President of the Commission and the Commissioners by EP; CE has to acknowledge the vote by majority (No. 5d) • Number of Commissioners is restricted (No. 5d) • In case of intergovernmental co-operation the C acts as Secretariat of the CE (No. 5f) 	<ul style="list-style-type: none"> • C is the executive (No. 7) 	<ul style="list-style-type: none"> • Effective instruments for the co-ordination of economic policy (especially in case of disagreement by a MS) have to be constructed on initiative of the C, instead of using recommendations that can be overturned with a simple majority vote in the CE (p. 7-8) 	

Role of the national Institutions, Regions	<ul style="list-style-type: none"> • National parliaments play a marginal role in the work of the EU 	<ul style="list-style-type: none"> • A special role of the national parliaments in the EU is not proposed. However, the national Parliaments should strengthen their control over the national governments in European affairs (No. 28) 		<ul style="list-style-type: none"> • Introduction of a status as „Partner Region of the European Union“ applied to regions being proposed by the MS having the following rights: <ul style="list-style-type: none"> - Right to gain a hearing of the C - Representation in the Council of Regions - Right to call on the ECJ in arguments about competencies (No. 38 ff.) 	
Constitutional Court / European Court of Justice (ECJ)	<ul style="list-style-type: none"> • ECJ monitors the practise and interpretation of EC/EU law and makes rulings in case of arguments 	<ul style="list-style-type: none"> • Rulings on arguments about distribution of competencies to be made by a Constitutional Court / Constitutional Chamber (No. 24) 	<ul style="list-style-type: none"> • Rulings on arguments about competencies to be made by a Senate of Competencies (with participation of judges of the national constitutional courts) (No. 5i) 	<ul style="list-style-type: none"> • ECJ as a Constitutional Court • Possibility to file a suit against a regulation even before it becomes effective (if the principle of Subsidiarity is threatened) (No. 41ff.) 	
Procedure for constitutional change	<ul style="list-style-type: none"> • MS or the C can propose treaty changes to the CE (Art. 48 TEU) 	<ul style="list-style-type: none"> • Full participation of EP, national parliaments and C (No. 10); responsibility rests with the MS (No. 15) 	<ul style="list-style-type: none"> • MS keep sole competence for treaty changes, which must be ratified (No. 5h) 		

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 13 -
<p>Further Key Questions</p> <p>Enlargement of the EU</p>	<ul style="list-style-type: none"> • EU-27 generally possible until 2005 • Every European nation can apply for membership in the EU (Art. 49 TEU) as long as it accepts the principles of the EU set down in Art. 6 (1) TEU and Art. 4 (1) TEC. <p>Accession after agreement in the CE (unanimous) and the EP (absolute majority)</p>	<ul style="list-style-type: none"> • „The geographic expansion of the EU must not exceed its integrational force.“ <p>⇒ Therefore also different forms of institutional co-operation below the threshold of full membership (e.g. „European Partnership“ modelled on the EEA)</p> <p>(No. 6)</p>	<ul style="list-style-type: none"> • Accession treaties have to be accepted by the EP <p>(No. 5h)</p>			
<p>Level of Integration</p>		<ul style="list-style-type: none"> • Integration is based on solidarity but also on competition • Economic and social change make a certain flexibility of the treaties necessary <p>(No. 22)</p>	<ul style="list-style-type: none"> • Principle of fidelity to the union (No. 10 TEC) does not only apply with regard to the EU but also with regard to the MS <p>(No. 3l)</p> <ul style="list-style-type: none"> • Intergovernmental co-operation remains <p>(No. 3c)</p> <ul style="list-style-type: none"> • Instruments of “Reinforced co-operation” and „Opting out“ <p>(No. 3d)</p>		<ul style="list-style-type: none"> • Exceptions that have been granted to certain MS (e.g. for policy areas pertaining to the freedom of movement) have to be critically re-evaluated <p>(p. 19)</p>	
<p>Important fields of policy:</p> <p>Justice and Home Affairs</p>			<ul style="list-style-type: none"> • Degree of police co-operation is sufficient <p>(No. 6 Appendix)</p> <ul style="list-style-type: none"> • No distribution of original police work with executive powers to EUROPOL <p>⇒ Police work / powers are a matter for the MS</p> <p>(No. 6 Appendix)</p> <ul style="list-style-type: none"> • Co-operation in the field of justice ⇒ creation of common legal approaches in areas of trans-national interest <p>(Anl. No.7)</p>		<ul style="list-style-type: none"> • European Prosecution • European Border Police • Police co-operation in addition to EUROPOL and EUROJUST <p>(p. 11)</p> <ul style="list-style-type: none"> • Co-operation in the areas of civil and penal law in cases of trans-border activities • Definition of the legal content of Union Citizenship <p>(p.11)</p>	

	Status quo TEC / TEU	EPP	CDU/CSU	EP (Lamassoure)	Commission	- 14 -
Foreign Policy			<ul style="list-style-type: none"> • Competencies for the EU in the following areas <ul style="list-style-type: none"> - Foreign Trade - Currency Policy - Military and civilian Space Policy - Foreign Representation of the EU - Treaties with third parties / states • In areas that are handled on the intergovernmental level today (military guarantees, CFSP, Development etc.), the instruments of „reinforced co-operation“, „constructive abstention“, and „opting out“ should be used. • The office of Commissioner for External Affairs and the High Representative for the CFSP of the CE should be carried out by the same person (Appendix No. 16) 		<ul style="list-style-type: none"> • Unified presentation of the common interests, the CFSP • High Representative for the CFSP takes on the role of overall co-ordination of initiatives and assumes a leading function in crisis management • Providing adequate instruments for the CFSP • Majority decisions as a general rule, unanimity only in special cases in Security and Defence Policy (p.11 u. 17) • The office of Commissioner for External Affairs and the High Representative for the CFSP of the CE should be carried out by the same person 	
Financial Constitution			<ul style="list-style-type: none"> • Reorganisation of the financing of the EU, based on economic prosperity (GNP in PPP) (No. 3n) • Replacing structural and cohesion fund with a unified stability fund (No. 3n) 			
Goal of the Reform / Constitution		<ul style="list-style-type: none"> • More democratic, transparent and efficient EU (No. 9, 16, 29) • EU closer to the citizen (No. 27, 29) • Creation of further institutions and administrative positions in the EU must be stopped (No. 43) 	<ul style="list-style-type: none"> • More democratic, transparent and efficient EU (No. 2) • EU closer to the citizen (No. 2a) • EU should concentrate on European core tasks <p>⇒ Distribution of further competencies to the EU but at the same time redistribution of competencies to the MS (No. 2)</p>			